

SELECTED ENTITY COMPARISON CHART¹

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Consideration	C Corporation ²	S Corporation ³	General Partnership	Limited Partnership	Limited Liability Company ⁴
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NON TAX CONSIDERATIONS

Accepted by Attorneys	Yes	Yes	Yes	Yes	Almost ⁵
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² The corporation is referred to as a “C” corporation, because it is subject to Subchapter C of the Internal Revenue Code.

³The corporation is referred to as an “S” corporation, because it is subject to Subchapter S of the Internal Revenue Code which deals with “small business corporations”.

⁴ *Comparability analysis assumes a multi-member limited liability company taxed as a partnership. A discussion of single member LLCs, which are taxed as sole proprietorships, is beyond the scope of this chart. In addition, LLC references will focus on revised Chapter 608 of Florida Statutes effective October 1, 1999.*

⁵Some attorneys are reluctant to use an LLC as it is a new entity form and there is little or no case law precedent regarding a number of legal issues.

Available in all States	Yes	Yes.	Yes	Yes	Yes
Formal Acts Required	Yes, filing Articles of Incorporation.	Yes, filing Articles of Incorporation.	No. Partnership agreement can be oral for tax purposes. Reg. §1.761-1(c).	Yes. Generally must file Certificate of Limited Partnership with Secretary of State.	Yes. Articles of Organization must be filed with Secretary of State.

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Existence of Uniform Act	Yes. Model Business Corporation Act.	Not applicable as S status is tax concept.	Yes. Revised Uniform Partnership Act (RUPA).	Yes. Revised Uniform Limited Partnership Act (RULPA).	Yes. Uniform Limited Liability Company Act. ⁶
Limited Liability of Owners	All Shareholders.	All Shareholders.	None - Unless LLP is used. See F.S. § 620.9001, F.S. § 620.9002 and F.S. § 620.8306. LLP provides limited liability for all partners, including partners of limited partnership.	None for general partner; ⁷ all limited partners have limited liability except if they significantly participate in the business in a capacity other than as an employee of an entity general partner. Can use LLP status.	All members have limited liability, but lack of case law precedent or statutory authority in many jurisdictions.

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⁶The ULLCA was adopted by the National Conference of Commissioners on Uniform State Laws in 1994 and approved in 1995. Since most states enacted LLC statutes prior to the ULLCA, their statutes do not conform to the ULLCA, unless they have been amended. Florida Statute § 608 does not conform to the ULLCA.

⁷For ruling purposes before January 1, 1997, a corporate general partner was required to have a net worth equal to 10% of the total contributions of the partners. Rev. Proc. 89-12. However, the IRS will not challenge the partnership classification for an entity formed prior to January 1, 1997 if the entity had a reasonable basis for its claimed classification and the entity has not been notified by the IRS on or before May 8, 1996 that the classification was

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Asset Protection - Rights of Judgment Creditors of an Owner to Entity Asset/Management	Generally, a judgment creditor or bankruptcy trustee of a stockholder can seize stock. Creditor's rights will depend on what rights the stock carries and restrictions in agreement.	Same as C corporation, but judgment creditor may have additional leverage if he can terminate S election, subject to restrictions in articles, by-laws and agreements.	The judgment creditor or bankruptcy trustee of a general partner may be entitled to step in and take over general partner's rights, and require the partnership to wind up or terminate general partner's interest.	Judgment creditor has same rights as in general partnership for general partner's interest. Judgment creditor of a limited partner may only obtain a charging order for the unsatisfied amount. To the extent so charged, the judgment creditor has only the rights of an assignee of such interest. ⁸	Right similar to that of a judgment creditor or bankruptcy trustee of a limited partner. F.S. §608.433(4). No case law precedent in Florida that creditor remedies in Florida against a member is limited to a charging order.

under examination. Reg. §301.7701-3(f)(2).

⁸ Court may grant other relief if charging order not likely to satisfy a creditor's claim within reasonable period.

Limitation on Number of Owners	No limit.	Limited to 75 effective 1/97. Prior law allowed only 35.	At least two.	At least two.	No limit. Some LLC statutes permit a single member, e.g., Florida and others require two members. However, for partnership classification prior to 1/97, the IRS required at least two members. ⁹
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Length of Entity's Life	Can be perpetual	Can be perpetual	A partnership does not exist in perpetuity. It dissolves on withdrawal of general partners, unless remaining general partner. ¹⁰	Same as general partnership, except limited partners may elect to continue. ¹¹	Withdrawal of member does not trigger a dissolution. F.S. § 608.441(2)

⁹See Rev. Rul. 95-10 which provides the conditions under which a letter ruling will be issued classifying an LLC as a partnership. However, the so-called "check-the-box" final regulations issued December 17, 1996, generally effective January 1, 1997, permit single-member unincorporated entities. See Reg. §301.7701-2(a).

¹⁰ The sale or exchange of 50 percent or more of the total interest in partnership capital and profits will cause a termination for federal income tax purposes of the partnership under IRC 708(b)(1)(B).

¹¹ After adoption of the check-the-box regulations, the dissolution provisions of a partnership agreement are no longer driven by federal income tax requirements, but are matters of state law, state tax, and general non-tax considerations.

Ability to Withdraw Under Statutory Default Rule	Not applicable.	Not applicable.	A general partner may withdraw in contravention of agreement.	A limited partner may not withdraw unless specified in certificate or limited partnership agreement.	A member may not withdraw unless specified in articles of organization or operating agreement. F.S. §608.427(1)
Rights of an Assignee to become an owner	May be restricted by articles of incorporation, bylaws, shareholders' agreement or agreement between shareholders and the corporation. F.S. §§607.0627 & 607.0732	May be restricted by articles of incorporation, bylaws, shareholders' agreement or agreement between shareholders and the corporation. F.S. §§607.0627 & 607.0732	Assignment does not, by itself, cause a dissolution and winding up of the partnership business, but does not entitle the transferee, during the continuance of the partnership to participate in the management or conduct of the partnership business. F.S. §620.8503	Unless otherwise provided in the partnership agreement, an assignee can become a limited partner only if all of the other partners consent. F.S. §620.154	Unless otherwise provided in articles of organization or operating agreement, an assignee can become a member only if all of the other members consent. F.S. §608.433(1)
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Eligible Type of Entity Owner	No tax limitations.	Must be an individual (who is not a nonresident alien), an electing qualified small business trust, a qualified Subchapter S trust, a qualified retirement plan trust, grantor trust, or a charitable trust. IRC §1361. Thus, a shareholder cannot be a corporation or partnership. ¹²	No tax limitations.	No tax limitations.	No tax limitations.
Family Entity's Ownership of S Corporation Stock	Not eligible.	Generally no, but can own stock of wholly owned subsidiary S corporation. ¹³	Not eligible.	Not eligible.	Not eligible.
Family Entity's Ownership of Stock of Subsidiary	None.	None, but subject to special rules relating to taxation of the S corporation shareholder. IRC §1361(b)(2)(A).	None.	None.	None.
Multiple Classes of Equity Interests	No restrictions.	Only one class of stock allowed, but differences in voting rights permitted IRC §1361(c)(4).	No restrictions.	No restrictions.	No restrictions.

¹²The types of owners of an S Corporation were expanded by the Small Business Act of 1996. For example, a nonresident alien may own stock in an S Corporation indirectly as a beneficiary of an electing qualified small business trust.

¹³ In such case, the subsidiary S corporation is not treated as a separate taxable entity. IRC §§1361(5)(1)(B), 1361 (c), 1361(e).